

U.S. Department of Homeland Security  
Citizenship and Immigration Services

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425 I Street, NW  
Washington, DC 20536

SEP 12 2003

MEMORANDUM FOR REGIONAL DIRECTORS  
SERVICE CENTER DIRECTORS

FROM:

William R. Yates   
Associate Director for operations

SUBJECT:

Service Center Issuance of Notice to Appear (Form I-862)

This memorandum discusses new guidelines for Service Centers when exercising their authority to issue Form 1-862, *Notice to Appear* (NTA), and is a reminder of the existing principles that govern decisions to exercise prosecutorial discretion when adjudicating benefits applications.

The initial phase will focus on three areas

- 1 All cases where the alien's violation of the Immigration and Nationality Act (INA), and/ or Federal, State or local statutes and codes constitutes a threat to public safety or national security;
- 2 Instances where fraud scheme has been detected,
- 3 Certain applications for Temporary Protected Status (TPS) where the basis for the denial or withdrawal constitutes a ground of deportability or excludability. The regulations require the issuance of a charging document when the basis for a TPS denial or withdrawal constitutes a ground of deportability or excludability. [See 8 CFR 244.10(c)(1) and 244.14(b)(3)].

This initial phase is scheduled to commence by the end of September 2003, once Standard Operating Procedures (SOPs) have been completed and all training, systems, and

resources needs have been addressed. An assessment of the initial implementation phase will be conducted in conjunctions with Immigration and Customs Enforcement (ICE), and the Executive Office of Immigration Review (EOIR) before any subsequent phases are implemented.

In instances where aliens appear to be subject to mandatory detention under section 236(c) of the INA, the Service Centers will adjudicate the application, prepare and sign an NTA, but will not serve the NTA on the alien or on EOIR. Instead, the Service Centers will prepare a memorandum to the file explaining that an NTA has been signed, but not served, and that the case is being transferred for custody determination and NTA service to the appropriate ICE District Office point of contact for service of the charging document.

Lastly, it is important to remind officers that each decision to issue an NTA must be made in accordance with the attached memorandum entitled: *Exercising Prosecutorial Discretion*, dated November 17, 2000. Although that memorandum was issued prior to September 11, 2001 and the implementation of enhanced security checks on all applications and petitions, it established the guiding principles for determinations regarding prosecutorial discretion and remains in force.

If you have any questions regarding this memorandum, please contact, via appropriate channels, your center or regional representative. If needed, Service Center representatives may contact Danielle Lee or Al Herrera via e-mail or telephone, at (202) 305-8010. Regional representatives may contact Peter Rosenstock via email or at (202) 514-2982.